Top Four Estate Planning FAQs

By CAMERON KAPPERMAN
Chambliss Law Estate Planning Attorney

Do I *really* need a will?

Well, it depends…

- How are your assets owned? Individually or jointly with a spouse?
- Do you have pay-on-death (POD) or transfer-on-death (TOD) beneficiaries listed on your bank accounts?
- Is a living person designated as a beneficiary on your life insurance or retirement accounts?
- Do you, your spouse, or heirs have a disability, special needs, or receive government benefits?
- Are your children happily married? Can they handle money well?

Each of these questions will help determine whether you need a will or other estate planning vehicle. The first step involves identifying your assets and how those are owned. Once the mechanics of the future transfers are understood, we consider the consequences of those assets going to a person with a disability on government benefits, a child going through a divorce, a grandchild with special needs, or other circumstances that require customized planning. The answers to these questions will reveal whether you need a will or other estate planning vehicle.

What happens if I die without a will?

State law governs the distribution of a person's property when he or she dies "intestate" or without a will. In Tennessee, the property of an intestate individual passes as follows:

CHILDREN BUT NO SPOUSE	Divided equally among children
SPOUSE BUT NO CHILDREN	100% to spouse
SPOUSE AND CHILDREN	Spouse and children share equally, but spouse's share is at least 1/3
NO SPOUSE OR CHILDREN	100% to parents
NO SPOUSE, CHILDREN, OR PARENTS	100% to siblings or their descendants
NO SPOUSE, CHILDREN, PARENTS, OR SIBLINGS	100% to grandparents or their descendants

How can I avoid probate?

The probate process is generally straightforward and in many cases represents the best way to dispose of assets after death. However, many people desire to avoid the probate process if possible. The following are some techniques frequently employed to avoid probate:

- Own assets jointly. An asset owned jointly passes automatically to the surviving owner, removing the asset from probate.
- Use beneficiary designations. These are contractual provisions that govern the disposition of certain assets following your death.
- Create a trust. A trust is a separate legal entity through which a trustee holds property for the benefit of a beneficiary. The trustee safeguards, invests, and distributes the property for the beneficiary according to instructions contained in a trust agreement created by the trust settlor. Trusts are incredibly flexible instruments that can be used for a variety of purposes and clients, and they likely represent the best way to avoid the probate process.

Can I name my estate as the beneficiary of my Individual Retirement Account (IRA)?

You can name your estate as the beneficiary of a qualified retirement account (e.g. 401(k) or IRA), but in most circumstances, it is not recommended. Naming your estate as the beneficiary of a qualified retirement account increases the risk of falling into the trap of the "5-year method." The 5-year method requires all funds in an inherited retirement account be distributed within five years after the date of the original account owner's death.

Under IRS rules, an estate is not considered a "designated beneficiary," which means it has no life expectancy and cannot take advantage of the option to "stretch" the IRA distributions over the life expectancy of the beneficiary. However, if you name an individual or certain types of trusts as beneficiary of your IRA, the beneficiary will be able to take advantage of the "stretch IRA" concept. This may result in significant income tax savings to the beneficiary.

These are four of the most common questions we are asked when working with our estate planning, elder law, and special needs planning clients. If you have additional questions, please contact us.